IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

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WRIT PETITION NO : 8495 of 1994

Between:

1. Bellam Narayanappa s/o Naraiah, aged about 45 years
2. Bellam Subramanyam s/o Naraiah,aged about 39 years

Both are residents of Konapuram (village)

Penukonda Mandal, Anantapur District.

..... PETITIONERS

AND

1. The District Collector, Anantapur.
2. The Revenue Divisiional Officer, Anantapur.
3. The Mandal Revenue Officer, Penukonda

Anantapur Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of Certiorari or any other appropriate with or direction calling for the records relating to the notification and declaration issued under Section 4 (1) and 6 of the Land Acquisition Act published in Eenadu daily dated 6.10.93 and 27.3.1994 respectively and quash the same in so far as the petitioner land is concerned.

Counsel for the Petitioners: MR.O.Manohar Reddy

Counsel for the Respondent Nos.1 to 3: GP FOR LAND ACQUISITION

The Court made the following:

ORDER:

This writ petition has been filed by the petitioners to call for the records relating to the notification and declaration issued under Section 4 (1) and 6 of the Land Acquisition Act published in Eenadu daily dated 6-10-1993 and 27-3-1994 respectively and quash the same.

Back ground facts as projected by the petitioners essentially are as follows:

The petitioners are the owners of the land in Sy.No.52-3 of Konapuram village, Penukonda Mandal, Anatapur District. The 1st respondent issued notification under Section 4 (1) of the Land Acquisition Act proposing to acquire an extent of Ac.1.20 cents of land in the above said survey number for the purpose of providing burial ground to the residents of Konapuram village. In pursuance of the same, the petitioners sent objections to the District Collector on the ground that there is vacant Government land in S.No.24 by the side of the land in question. Thereafter the 2nd respondent without considering the objections and without conducting a proper enquiry as contemplated under Section 5-A of the Land Acquisition Act (for short the 'Act') submitted a report and basing on the same, the 1st respondent has issued declaration under Section 6 of the Land Acquisition Act.

A counter-affidavit has been filed by the respondents admitting the issuance of notification and declaration. It was further stated in the counter that the land in

S.No.24 which was suggested by the petitioners is not a Government land and was assigned to political sufferers. Since there are existing burials in the land in question, which was proposed to be acquired, they proceeded with the proceedings of acquisition. The State Government in G.O.Ms.No.1888 Rev (K) Department dated 31-12-1984 delegated all the powers conferred on it to the District Collectors to discharge the duties under Section 4, 5-A and sub-section 4 of Section 17 of the Act.

Heard the learned counsel on either side.

Learned counsel for the petitioners contended that the respondents have no power to acquire the land for the purpose of Burial ground and it is only the Government, which has got power to issue the said notification. He further contended that there is vacant Government land by the side of the land in question for the purpose of burial ground and no reasons are forthcoming from the respondents to acquire a speck of land where the petitioners are in possession and enjoyment of the same by developing a garden, by virtue of interim orders. Learned counsel further contended that without affording any opportunity of hearing the petitioners, conducting of an enquiry under Section 5-A of the Act, is not in accordance with law and therefore, he seeks permission of this Court to afford an opportunity to the petitioners to make a proper representation before the authorities concerned for acquisition of alternative site.

I have gone through the entire material available on record. Admittedly, the lands of the petitioners, are proposed to be acquired by the respondents, for which the petitioners submitted their objections. But, the 1st respondent without considering the objections and without conducting proper enquiry issued notification under section 4(1) and declaration under Section 6 of the Act. It is the policy of the Government that when alternative lands are available the fertile lands should not be acquired for general purpose. According to the petitioners, they are using the lands in question as agricultural lands. The record does not reveal that any opportunity is afforded to the petitioners prior to issuance of 4 (1) notification.

At this juncture, it is relevant to reproduce the provisions of section 5-A of the Act, which reads thus:

> *"5-A. Hearing of Objections:- (1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company*

may (within thirty days from the date of the publication of the notification), object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard (in person or by any person authorized by him in this behalf) or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, (either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government), the decision of the (appropriate Government) on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the lands were acquired under this Act).

In view of the provisions of section 5 A of the Act and in view of the submission of the learned counsel for the petitioners and taking into consideration of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it appropriate that the petitioners may be given an opportunity to file their objections under Section 5-A of the Act raising all the pleas raised in the present writ petition and make a proper representation before the authorities concerned.

Accordingly, the writ petition is disposed of by giving liberty to the petitioners to file their objections under Section 5-A of the Act raising all the pleas in the writ petition and make proper representation before the authorities concerned for acquisition of alternative site. No costs.

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16-12-2004

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To

1.The District Collector, Anantapur.

2.The Revenue Divisional Officer, Anantapur.

3. The Mandal Revenue Officer, Penukonda

Anantapur Dist.

4. Two CCs to GP for Revenue, High Court buildings, Hyderabad (OUT)

5. Two CD copies.